

Defendant subsequently filed a Motion to Dismiss, arguing that Plaintiff failed to exhaust his administrative remedies (Dkt. #9). Defendant maintained that Count III should be dismissed without prejudice and that Plaintiff should be allowed to amend his Complaint to limit Counts I and II to exhausted claims (Id. at 6). Attached to the motion were (1) Maricopa County Inmate Grievance Policies, (2) various inmate grievances filed by Plaintiff,

1 and (3) an affidavit of Zelean Tademy, Maricopa County Sheriff's Officer (Dkt. #10).  
2 Plaintiff filed several inmate grievances, including the following:

3 An inmate grievance alleging that Plaintiff suffered from a staph infection due  
4 to unsanitary and overcrowded conditions, and that he had to pay a co-pay for  
5 the medical treatment. Plaintiff appealed the grievance to the jail commander,  
6 stating that he suffered from staph infections and did not believe he should  
7 have to pay a medical co-pay. The jail commander responded to Plaintiff's  
8 complaint regarding the co-payment. Plaintiff then appealed to the external  
9 referee, again grieving the fact that he did not have a choice of providers and  
10 had to pay for medical services because his medical problems were the result  
11 of overcrowding and unsanitary conditions. The external referee responded  
12 that the co-pays would be paid according to law and policy, and that there was  
13 no evidence to suggest that overcrowding and an unsanitary environment were  
14 the cause of his infections. (Dkt. #10, exh. D, tab 2).

15 Plaintiff filed a Response, arguing that he exhausted his remedies (Dkt. #12). He  
16 further asserted that he does not have access to the full policy regarding inmate grievances  
17 (Id.). Plaintiff attached copies of various grievances demonstrating his efforts to grieve the  
18 issues regarding his diet (Dkt. #12).

19 Defendant responded by withdrawing his motion as to Count III – the claim  
20 concerning Plaintiff's diet (Dkt. # 14). Defendant maintains, however, that Plaintiff failed  
21 to exhaust his claims of overcrowding and unsanitary conditions (Id.). Defendant  
22 acknowledges that Plaintiff exhausted his claim of being housed without running water, but  
23 argues that this issue is so intertwined with Counts I and II that the Complaint should be  
24 dismissed without prejudice so that Plaintiff may file an Amended Complaint containing only  
25 exhausted claims (Id.).

## 26 **B. Legal Standard**

27 Pursuant to 42 U.S.C. § 1997e(a) of the Prison Litigation Reform Act, a prisoner may  
28 not bring a lawsuit with respect to prison conditions under 42 U.S.C. § 1983 unless all  
available administrative remedies are exhausted. See Roles v. Maddox, 439 F.3d 1016, 1017  
(9th Cir. 2006). Exhaustion is mandated “regardless of the relief offered through  
administrative procedures.” Booth v. Churner, 532 U.S. 731, 741 (2001). It is required in  
all inmate suits regarding prison life. Porter v. Nussle, 534 U.S. 516, 523 (2002). The  
purpose of the exhaustion requirement is to “afford corrections officials time and opportunity

1 to address complaints internally before allowing the initiation of a federal case.” Brown v.  
 2 Valoff, 422 F.3d 926, 936 (9th Cir. 2005) (quoting Porter, 534 U.S. at 525).

3 “The defendants have the burden of raising and proving a prisoner’s failure to exhaust  
 4 under the PLRA.” Ngo v. Woodford, 403 F.3d 620, 626 (9th Cir.), cert. granted, 126 S. Ct.  
 5 647 (2005). The Court considers exhaustion as a matter of abatement in an unenumerated  
 6 Federal Rule of Civil Procedure 12(b) motion and “may look beyond the pleadings and  
 7 decide disputed issues of fact.” Wyatt v. Terhune, 315 F.3d 1108, 1119-20 (9th Cir. 2003).  
 8 The Court has broad discretion as to the method to be used in resolving the factual dispute.  
 9 Ritza v. Int’l Longshoremen’s & Warehousemen’s Union, 837 F.2d 365, 369 (9th Cir. 1988).

### 10 **C. Analysis**

11 According to the documents attached to the Motion to Dismiss, an inmate should seek  
 12 to resolve a conflict through the Maricopa County Jail System’s Inmate Grievance  
 13 Procedures. Specifically, an inmate who wishes to file a grievance will be provided a  
 14 Grievance Form upon request, and must submit the form to a detention officer. The  
 15 grievance is forwarded to the shift Supervisor and then to the Hearing Officer. If the Hearing  
 16 Officer is unable to resolve the grievance, the inmate may appeal his decision to the jail  
 17 commander, whose decision may be appealed to an External Referee. The External  
 18 Referee’s decision is final.

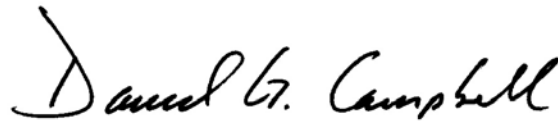
19 Plaintiff alleges that his constitutional rights were violated due to (1) overcrowding,  
 20 (2) unsanitary conditions, and (3) the failure to provide him with an appropriate diet (Dkt.  
 21 #1). Defendants concede that Plaintiff exhausted his administrative remedies as to Count III.

22 According to the exhibits introduced by Defendant, Plaintiff filed an inmate grievance  
 23 regarding overcrowding and unsanitary conditions (Dkt. #10, exh D, tab 2 at unnumbered 1).  
 24 Further, Plaintiff appealed the denial of his grievances to the external referee, who responded  
 25 by addressing the co-pay issue and finding that there was no evidence to suggest that the jail  
 26 conditions of overcrowding and unsanitary environment were the cause of his staph  
 27 infections (Dkt. #10, exh. D, tab 2 at unnumbered 7). Based on this evidence, Plaintiff filed  
 28 an inmate grievance concerning overcrowding and unsanitary conditions. Although the jail

1 commander did not specifically address the issues, the external referee did. Plaintiff thereby  
2 afforded Defendant time and an opportunity to address his complaints regarding  
3 overcrowding and unsanitary conditions “internally before allowing the initiation of a federal  
4 case.” See Brown, 422 F.3d at 936. Defendant’s Motion to Dismiss will be denied.

5 **IT IS ORDERED** that Defendant’s Motion to Dismiss (Dkt. # 9) is **denied**.

6 DATED this 13<sup>th</sup> day of June, 2006.

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10 David G. Campbell  
11 United States District Judge  
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